

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Albino Ortega and Maria Juarez

Licensees of AM Station KIGO

St. Anthony, Idaho

Facility ID No. 22622

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File No.: EB-06-PO-101

NAL/Acct. No.: 200632920003

FRN: 0011338407

FORFEITURE ORDER

Adopted: May 2, 2007**Released: May 4, 2007**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Albino Ortega and Maria Juarez, licensees of AM radio station KIGO in St. Anthony, Idaho, for willfully and repeatedly violating Section 73.49 of the Commission's Rules ("Rules").¹ On September 27, 2006, the Enforcement Bureau's Portland Resident Agent Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$7,000 to Ortega and Juarez for failing to enclose the KIGO antenna tower within an effective locked fence or other enclosures.² In this *Order*, we consider Ortega and Juarez's request that we reduce the forfeiture amount based on their inability to pay the amount proposed by the Portland Office.

II. BACKGROUND

2. On August 1, 2006, an agent from the Enforcement Bureau's Portland Resident Agent Office conducted an inspection of the AM antenna tower used by Albino Ortega and Maria Juarez to broadcast AM station KIGO. According to its license, the KIGO antenna tower is series fed and, therefore, required to be fenced. Upon inspection of the KIGO antenna tower, the Portland agent found that the antenna tower did not have a locked fence or any type of barrier surrounding the base of the tower. The antenna site, located in Rigby, Idaho, is approximately 3000 feet northeast from a residential community.³ In addition, the agent noted that there was no perimeter fence surrounding the property upon which the antenna structure was sited to prevent the public from accessing the tower.

3. On August 2, 2006, the Portland agent again inspected the KIGO tower and found that there continued to be no locked fence or any type of barrier surrounding the base of the KIGO tower. There also continued to be no perimeter property fence surrounding the antenna site to prevent the public from accessing the tower.

4. On August 3, 2006, the Portland agent inspected the KIGO main studio in Idaho Falls, Idaho. The agent advised the chief operator on duty about the lack of fencing or barriers around the

¹ 47 C.F.R. § 73.49.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632920003 (Enf. Bur., Western Region, Portland Resident Agent Office, released September 27, 2006).

³ The residential community consists of single family homes along several county roads in Rigby, Idaho.

KIGO tower. The chief operator acknowledged the lack of fencing and barriers around the tower.

5. On September 27, 2006, the Portland Office issued a *NAL* in the amount of \$7,000 to Ortega and Juarez, finding that Ortega and Juarez apparently willfully and repeatedly violated Section 73.49 of the Rules⁴ by failing to enclose the KIGO antenna tower within an effective locked fence or other enclosures. Ortega and Juarez filed a response ("*Response*") on October 25, 2006, admitting the violation of Section 73.49, providing evidence that an effective fence now enclosed the antenna structure, and requesting that the forfeiture amount be reduced based on their inability to pay.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").⁷ In examining Ortega and Juarez's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸

7. Section 73.49 of the Rules states that antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures.⁹ The KIGO AM antenna tower is series fed. In adopting the *Report and Order* promulgating the most recent amendment of Section 73.49, the Commission stated that "a fencing requirement is necessary to protect the general public."¹⁰ The Portland agent's inspections on August 1, 2006, and August 2, 2006, revealed no locked fence or barrier of any type surrounding the base of the KIGO tower. Ortega and Juarez provide evidence that as of October 10, 2006, a barrier had been constructed around the base of the KIGO antenna tower.¹¹

8. In their *Response*, Ortega and Juarez admit their violation of Section 73.49, but also request that the forfeiture amount be reduced based on their inability to pay. To support their request, they supply three years of income tax data.¹² In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a

⁴ 47 C.F.R. § 73.49.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 C.F.R. § 73.49.

¹⁰ *Review of the Technical and Operational Regulations of Part 73, Subpart A, AM Broadcast Stations*, 59 Rad. Reg. 2d (Pike & Fischer) 927, ¶6 (1986) ("*Report and Order*").

¹¹ We note that a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture. *See, e.g., AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

¹² As part of their *Response*, Ortega and Juarez submit photographs of the completed fence now surrounding the KIGO antenna tower.

licensee is able to pay the assessed forfeiture.¹³ While we find that Ortega and Juarez willfully and repeatedly violated Section 73.49 of the Rules, based upon their inability to pay, we conclude that pursuant to Section 503(b) of the Act and the *Forfeiture Policy Statement*, reduction of the \$7,000 forfeiture to \$500 is warranted.

IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Albino Ortega and Maria Juarez, **ARE LIABLE FOR A MONETARY FORFEITURE** in the amount of \$500 for willfully and repeatedly violating Section 73.49 of the Rules.¹⁴

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁵ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Albino Ortega and Maria Juarez at their address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹³ See *PLB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

¹⁴ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.49.

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.